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MARTIN FRANCHISES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 ESTATE OF VIOLA B. SPAULDING;
11 FLORENCE SPAULDING, trustee;
12 LYNN SPAULDING, doing business as
13 Spaulding Enterprises; and TINA
14 SPAULDING WARD, doing business as
Spaulding Enterprises, THE
CONSERVATORSHIP OF EILEEN
SPAULDING.

15 Plaintiffs,

11

18 YORK CLEANERS, INC., a dissolved
19 California corporation; ESTATE OF
20 BARNARD LEWIS, DECEASED;
21 DAVID VICTOR LEWIS, an individual;
MARTIN FRANCHISES, INC., an Ohio
corporation; SETH R. DOLE, an
individual; and RUTH DOLE, an
individual; and DOES 1 through 100.

23 || Defendants.

CASE NO. C 08-00672 CRB

**ANSWER OF DEFENDANT MARTIN
FRANCHISES, INC. TO COMPLAINT**

25 COMES NOW Martin Franchises, Inc. ("Martin") by and through its attorneys of record,
26 in answering the complaint of plaintiffs Estate of Viola Spaulding, Florence Spaulding, trustee;
27 Lynn Spaulding; Tina Spaulding Ward and the Conservatorship of Eileen Spaulding, and
28 responds as follows.

NATURE OF ACTION

1. Martin has no knowledge or information on which to respond to allegations set forth in paragraphs 1, 2 and 3, and on that basis denies each and every allegation.

PARTIES

2. Martin has no information or knowledge on which to respond to allegations set forth in paragraphs 4 through 8, and on that basis denies said allegations.

DEFENDANTS

3. Martin has no information or knowledge with respect to the allegations set forth in paragraphs 9 through 11, and on that basis denies said allegations.

4. With respect to the allegations in paragraph 12, Martin denies said allegations.

5. As to the allegations in paragraphs 13 through 15, Martin has no knowledge or information concerning these allegations, and on that basis denies said allegations.

JURISDICTION, VENUE AND NOTICE

6. With respect to paragraphs 16 through 19 of the complaint, Martin denies said allegations.

7. With respect to the allegations in paragraph 20 of the complaint, Martin has no knowledge or information which would enable it to respond, and on that basis denies said allegations.

19 8. With respect to the allegations in paragraph 21, Martin denies said allegations.

GENERAL ALLEGATIONS

9. With respect to the allegations set forth in paragraph 22 through 26 of the complaint, Martin has no knowledge or information, and on that basis denies said allegations.

10. With respect to the allegation set forth in paragraphs 27 through 29 of the complaint, insofar as the allegations pertain to Martin, Martin denies said allegations.

FIRST CAUSE OF ACTION

11. With respect to the allegations set forth in paragraph 30 of the complaint, Martin incorporates its prior responses to the paragraphs incorporated herein.

28 12. With respect to the allegations set forth in paragraphs 31 through 34 of the

1 complaint, the allegations simply purport to be recitations of the law. Accordingly, the statutes
2 speak for themselves, and Martin cannot admit or deny said allegations.

3 13. Martin has no information or belief on which to respond to the allegations in
4 paragraph 35 of the complaint, and on that basis denies said allegations.

5 14. With respect to the allegations set forth in paragraphs 36 through 39 of the
6 complaint, Martin states that the allegations are simply alleged recitations of the law. The
7 statutory law speaks for itself, and thus Martin cannot admit or deny said allegations.

8 15. With respect to the allegations in paragraphs 40 and 41 of the complaint, Martin
9 has no information or knowledge regarding these allegations, and on that basis denies said
10 allegations.

11 16. Insofar as the allegations set forth in paragraph 42 of the complaint allegedly
12 pertain to Martin, Martin denies said allegations.

13 17. With respect to the allegations set forth in paragraphs 43 and 44 of the complaint,
14 Martin has no information or knowledge, and on that basis denies said allegations.

15 18. Insofar as the allegations set forth in paragraph 45 of the complaint allegedly
16 pertain to Martin, Martin denies said allegations.

SECOND CAUSE OF ACTION

18 19. Insofar as paragraph 46 of the complaint purports to incorporate the preceding
19 paragraphs, Martin incorporates its responses to those paragraphs.

20 20. Insofar as the allegations in paragraphs 47 and 48 purport to pertain to Martin,
21 Martin denies said allegations.

22 21. Martin has no information or knowledge regarding the allegations of paragraph
23 49 of the complaint, and on that basis denies said allegations.

24 22. Insofar as the allegations in paragraph 50 purport to pertain to Martin, Martin
25 denies said allegations.

26 23. The allegations set forth in paragraph 51 purport to recite the law. Statutory law
27 would speak for itself, and on that basis Martin cannot admit or deny said allegations.

28 24. Martin denies the allegations set forth in paragraphs 52 and 53 of the complaint.

1 25. Insofar as the allegations in paragraph 54 of the complaint purport to pertain to
2 Martin, Margin denies said allegations.

THIRD CAUSE OF ACTION

4 26. Insofar as paragraph 55 of the complaint incorporates the prior allegations, Martin
5 hereby incorporates its prior responses to those paragraphs.

6 27. Martin has no information or knowledge pertaining to the allegations in paragraph
7 56 of the complaint, and on that basis, denies said allegations. Insofar as the allegations set forth
8 in paragraph 57 of the complaint purport to pertain to Martin, Martin denies said allegations.

FOURTH CAUSE OF ACTION

10 28. Insofar as the allegations in paragraph 58 of the complaint incorporate the prior
11 allegations of the complaint, Martin hereby incorporates its prior responses to those paragraphs.

12 29. Paragraphs 59 through 61 of the complaint purport to recite statutory law, and the
13 statute would speak for itself. On that basis, Martin cannot admit or deny said allegations.

14 30. Insofar as the allegations in paragraph 62 and 63 of the complaint purport to
15 pertain to Martin, Martin denies said allegations.

16 31. Martin has no information or knowledge regarding any of the allegations in
17 paragraph 64 of the complaint, and on that basis denies said allegations.

18 32. Insofar as the allegations in paragraph 65 of the complaint purport to pertain to
19 Martin, Martin denies said allegations.

20 33. Martin has no information or knowledge regarding the allegations in paragraph 66
21 and 67 of the complaint, and on that basis denies said allegations.

22 34. Insofar as the allegations in paragraph 68 of the complaint purport to pertain to
23 Martin, Martin denies said allegations.

24 35. Martin has no information or knowledge pertaining to the allegations in paragraph
25 69 of the complaint, and on that basis denies said allegations

FIFTH CAUSE OF ACTION

27 36. Insofar as the allegations in paragraph 70 of the complaint purport to incorporate
28 the prior allegations, Martin incorporates its prior responses to those allegations.

1 37. Insofar as paragraph 71 of the complaint purports to address statutory law, the
2 statutes speak for themselves. On that basis Martin cannot admit or deny said allegations.

3 38. Insofar as the allegations in paragraph 72 of the complaint purport to pertain to
4 Martin, Martin denies said allegations.

5 39. Martin has no information or knowledge pertaining to the allegations in paragraph
6 73 of the complaint, and on that basis denies said allegations.

SIXTH CAUSE OF ACTION

8 40. Insofar as the allegations in paragraph 74 of the complaint purport to incorporate
9 prior allegations, Martin incorporates its prior responses.

10 41. Insofar as the allegations in paragraph 75 and 76 of the complaint purport to
11 pertain to Martin, Martin denies said allegations.

12 42. Martin has no information or knowledge pertaining to paragraph 77 of the
13 complaint, and on that basis denies said allegations.

14 43. Insofar as the allegations in paragraphs 78 through 80 of the complaint purport to
15 pertain to Martin, Martin denies said allegations

SEVENTH CAUSE OF ACTION

17 44. Insofar as the allegations in paragraph 81 of the complaint purport to incorporate
18 prior allegations, Martin incorporates its prior responses.

19 45. Insofar as the allegations of paragraph 82 of the complaint purport to speak to
20 statutory law, the statute speaks for itself. On that basis Martin cannot admit or deny said
21 allegations.

22 46. Insofar as the allegations in paragraph 83 of the complaint purport to pertain to
23 Martin, Martin denies said allegations

24 47. Martin has no knowledge or information pertaining to paragraph 84 of the
25 compliant, and on that basis denies said allegations.

EIGHTH CAUSE OF ACTION

27 48. Insofar as the allegations in paragraph 85 incorporate prior allegations, Martin
28 incorporates its prior responses.

1 49. Insofar as the allegations in paragraphs 86 and 87 of the complaint purport to
2 pertain to Martin, Martin denies said allegations.

3 50. Martin has no information or knowledge pertaining to the allegations in paragraph
4 88 of the complaint, and on that basis denies said allegations.

5 51. Insofar as the allegations in paragraphs 89 and 90 purport to pertain to Martin,
6 Martin denies said allegations.

NINTH CAUSE OF ACTION

8 52. Insofar as the allegations set forth in paragraph 91 of the complaint incorporate
9 prior allegations, Martin incorporates its prior responses to those allegations.

10 53. Insofar as the allegations in paragraphs 92 through 98 purport to pertain to
11 Martin, Martin denies said allegations.

TENTH CAUSE OF ACTION

13 54. Insofar as paragraph 99 of the complaint incorporates prior allegations, Martin
14 incorporates its responses to those allegations.

15 55. Paragraph 100 of the complaint purports to set forth statutory law, which speaks
16 for itself. On that basis Martin cannot admit or deny said allegations.

17 56. Martin denies the allegations in paragraphs 101 and 102 of the complaint.

18 57. Insofar as the allegations in paragraph 103 purport to pertain to Martin, Martin
19 denies those allegations.

ELEVENTH CAUSE OF ACTION

21 58. Insofar as paragraph 104 of the complaint incorporates plaintiffs' prior
22 allegations, Martin incorporates its responses to those allegations.

23 59. Insofar as the allegations in paragraphs 105 through 107 of the complaint purport
24 to pertain to Martin, Martin denies said allegations.

TWELFTH CAUSE OF ACTION

26 60. Insofar as the allegations in paragraph 108 incorporate plaintiffs' prior
27 allegations, Martin incorporates its prior responses to those allegations.

28 61. Insofar as the allegations in paragraph 109 purport to recite statutory law, the law

1 speaks for itself. Thus, Martin cannot admit or deny said allegations.

2 62. Martin has no knowledge or information to enable it to respond to the allegations
3 in paragraph 110, and on that basis denies said allegations.

4 63. Insofar as the allegations in paragraph 111 of the complaint purport to pertain to
5 Martin, Martin denies said allegations.

6 **THIRTEENTH CAUSE OF ACTION**

7 64. Insofar as the allegations in paragraph 112 of the complaint incorporate plaintiffs'
8 prior allegations, Martin incorporates its prior responses.

9 65. Insofar as the allegations in paragraphs 113 through 117 purport to recite statutory
10 law, these statutes speak for themselves. Thus, Martin cannot admit or deny said allegations.

11 66. Martin has no information or knowledge pertaining to the allegations in paragraph
12 118 of the complaint, and on that basis denies the allegations.

13 67. Insofar as the allegations in paragraph 119 of the complaint purport to pertain to
14 Martin, Martin denies said allegations.

15 68. Martin has no information or knowledge pertaining to the allegations in paragraph
16 120, and on that basis denies said allegations.

17 69. Insofar as the allegations in paragraph 121 purport to pertain to Martin, Martin
18 denies said allegations.

19 **FOURTEENTH CAUSE OF ACTION**

20 70. Insofar as the allegations in paragraph 122 of the complaint incorporate the prior
21 allegations, Martin incorporates its prior responses to those allegations.

22 71. Insofar as the allegations in paragraphs 123 through 127 purport to pertain to
23 Martin, Martin denies said allegations.

24 **FIFTEENTH CAUSE OF ACTION**

25 72. Insofar as the allegations in paragraph 128 incorporate the prior allegations,
26 Martin incorporates its prior responses to those allegations.

27 73. Martin has no information or knowledge to enable it to respond to the allegations
28 in paragraphs 129 through 131 of the complain, and on that basis denies said allegations.

1 74. Insofar as the allegations in paragraph 132 of the complaint purport to pertain to
2 Martin, Martin denies said allegations.

3 75. Martin has no information pertaining to the allegations in paragraph 133 of the
4 complaint, and on that basis denies said allegations.

5 76. Insofar as the allegations in paragraphs 134 and 135 of the complaint purport to
6 pertain to Martin, Martin denies said allegations.

7 77. Martin has no information pertaining to the allegations in paragraphs 136 and 137
8 and on that basis denies said allegations.

9 78. With respect to the allegations in paragraph 138 of the complaint, Martin denies
10 said allegations.

SIXTEENTH CAUSE OF ACTION

12 79. With respect to the allegations in paragraph 139, insofar as they incorporate the
13 prior allegations, Martin incorporates its prior responses.

14 80. Insofar as the allegations in paragraph 140 of the complaint purport to pertain to
15 Martin, Martin denies said allegations.

16 81. Martin has no information or knowledge pertaining to the allegations paragraph
17 141 of the complaint, and on that basis denies said allegations.

18 82. Insofar as the allegations in paragraph 142 of the complaint purport to pertain to
19 Martin, Martin denies said allegations.

SEVENTEENTH CAUSE OF ACTION

21 83. Insofar as the allegations in paragraph 143 of the complaint incorporate the prior
22 allegations, Martin incorporates its prior responses to those allegations.

23 84. Insofar as the allegations in paragraphs 144 and 145 complaint purport to pertain
24 to Martin, Martin denies said allegations.

25 85. With respect to the allegations in paragraph 146, Martin denies said allegations.

EIGHTEENTH CAUSE OF ACTION

27 86. Insofar as paragraph 147 of the complaint incorporates the prior allegations,
28 Martin incorporates its prior responses to the allegations.

1 87. Martin denies the allegations set forth in paragraphs 148 and 149 of the
2 complaint.

NINETEENTH CAUSE OF ACTION

4 88. Insofar as the allegations in paragraph 150 of the complaint incorporate the prior
5 allegations, Martin incorporates its prior responses to those allegations.

6 89. Insofar as the allegations in paragraphs 151 and 152 of the complaint purport to
7 pertain to Martin, Martin denies said allegations.

8 90. Martin has no knowledge or information which would enable it to respond to the
9 allegations in paragraphs 153 and 154 of the complaint, and on that basis denies said allegations.

10 91. Insofar as the allegations of paragraph 155 of the complaint purport to pertain to
11 Martin, Martin denies said allegations.

12 92. Martin has no information or knowledge which would enable it to respond to
13 allegations in paragraph 156 of the complaint, and on that basis denies said allegations.

14 93. Insofar as the allegations in paragraphs 157 through 160 of the complaint purport
15 to pertain to Martin, Martin denies said allegations.

TWENTIETH CAUSE OF ACTION

17 94. Insofar as the allegations in paragraph 161 of the complaint incorporate the prior
18 allegations, Martin incorporates its prior responses to those allegations.

19 95. Martin admits the allegations set forth in paragraphs 162 and 164 of the
20 complaint.

21 96. Martin has no knowledge or information which would enable it to respond to the
22 allegations in paragraph 163 of the complaint, and on that basis denies said allegations.

23 97. Martin does not have sufficient information or knowledge to enable it to respond
24 to the allegations in paragraphs 165 and 166 of the complaint, and on that basis denies said
25 allegations.

26 98. Martin does not have sufficient information or knowledge to enable it to respond
27 to the allegations in paragraphs 165 and 166 of the complaint, and on that basis denies said
28 allegations.

MARTIN'S AFFIRMATIVE DEFENSES**FIRST AFFIRMATIVE DEFENSE**

This answering defendant alleges that plaintiffs were guilty of contributory negligence in and about the matters and things alleged in said complaint. That the damages, if any, were proximately caused and contributed by the negligence of said plaintiffs as aforesaid.

SECOND AFFIRMATIVE DEFENSE

This answering defendant alleges that the sole proximate cause of the damages, if any, allegedly suffered by the plaintiffs, was the negligence and/or fault of people and entities other than this answering defendant, or on the part of any person or entity for whose acts or omissions this answering defendant is not legally or otherwise responsible.

THIRD AFFIRMATIVE DEFENSE

This answering defendant alleges that the complaint, and each cause of action thereof, does not state facts sufficient to constitute a cause of action against this answering defendant.

FOURTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the complaint, and each cause of action thereof, is barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the injuries and damages, if any, sustained by plaintiffs, was and were caused by accidents without any contribution on the part of this answering defendant.

SIXTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the negligence or fault of people and entities other than this answering defendant was the sole, contributory or concurrent proximate cause of the injuries or damages allegedly suffered by plaintiffs. If liability is assessed against this answering defendant, which liability is denied, this defendant is liable only for the amount of plaintiffs' non-economic damages allocated to them in direct proportion to its percentage of fault. Code of Civ. Proc. § 1431, et seq.

SEVENTH AFFIRMATIVE DEFENSE

There is no personal jurisdiction or subject matter jurisdiction for this suit against this defendant.

EIGHTH AFFIRMATIVE DEFENSE

This answering defendant alleges at the time and place mentioned in the complaint, other persons, including but not limited to the plaintiffs to this suit, were negligent, careless and otherwise legally blameworthy in the manner in which they conducted themselves. Said other persons proximately caused and/or contributed to causing the damages alleged in the complaint, if any there were.

NINTH AFFIRMATIVE DEFENSE

This answering defendant alleges that plaintiffs failed to exercise reasonable care and diligence to mitigate damages, if any.

TENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the subject product and its component parts was not and were not used as instructed and intended, but was and were subjected to unforeseeable and unanticipated misuse, abuse, alteration and/or modification by plaintiffs, which said misuse, abuse, alteration and/or modifications was and were the proximate cause of the injuries, if any, allegedly suffered by plaintiffs.

ELEVENTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the subject product and its component parts was not and were not used as instructed and intended, but was and were subjected to unforeseeable and unanticipated misuse, alteration and/or modifications by others than this answering defendant, which said misuse, abuse, alteration and/or modification was and were the proximate cause of the injuries and damages, if any, allegedly suffered by plaintiffs.

TWELFTH AFFIRMATIVE DEFENSE

This answering defendant alleges that plaintiffs are barred from recovery herein because of modification, alteration or change in some other manner, of the products referred to in plaintiffs' complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

This answering defendant is contractually and equitably entitled to full indemnification from other defendants and third-parties.

FOURTEENTH AFFIRMATIVE DEFENSE

This answering defendant contends that the complaint was not sufficiently clear to allow a complete response, and thus reserves its right to amend this answer.

WHEREFORE, DEFENDANT MARTIN PRAYS FOR JUDGMENT AS FOLLOWS.

8 1. That plaintiffs takes nothing by reason of the complaint.

9 2. That Martin be awarded attorneys' fees and costs of suit herein and such other

10 and further relief as the Court deems just and proper.

Dated: March 03, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: _____ /s/
Robert N. Berg